STUDIES IN WILLS

ROMANCE AND INTEREST OF AN OLD STORY

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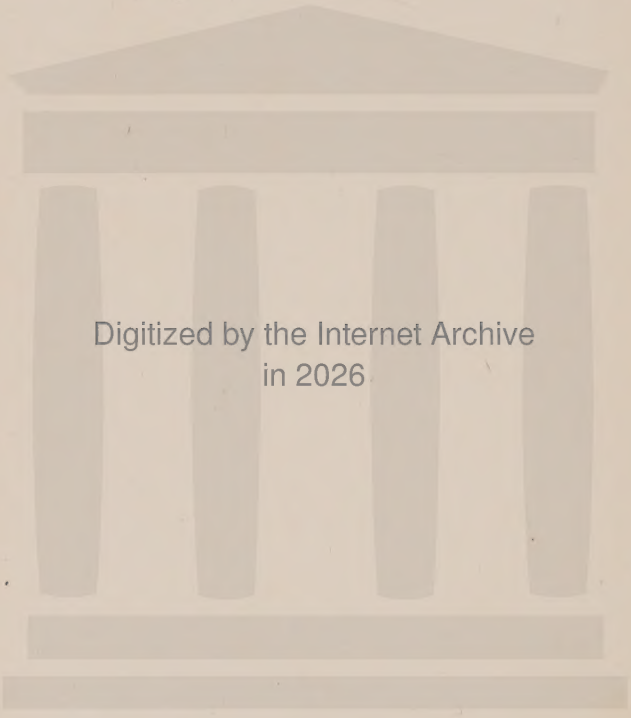
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Studies in Wills

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The court scene in "Mr. Meeson's Will" is from the novel by Rider Haggard. Reproduced by permission of the publishers, Longmans, Green & Co., London.

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The scene in the Temple of the Vestal Virgin is from the original by Hector Leroux, the property of the New York Public Library.

The picture of the court of Montezuma is from a painting in a museum in Mexico City.

Ptolemy XII bequeathing Egypt to the Romans.

DR. NORMAN A. WIGGINS

STUDIES IN WILLS

Romance and Interest of an Old Story

Mercantile Trust & Deposit Company
of Baltimore

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Frontispiece by R. McGill Mackall

THE story of the Will is one of enduring interest. It has to do with an age-old idea, with an institution that has exercised a powerful influence down through the history of mankind. In many an old legal tome, in extended historical records, in many a romantic tale, will the narrative be found by him who would read it at length. Here we propose to give merely a brief and simple account.

A. H. S. POST, *President*
Mercantile Trust & Deposit Co.
of Baltimore.

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STUDIES IN WILLS

Sir Rider Haggard, of "King Solomon's Mines" and "She", once wrote a less well known story which he entitled "Mr. Meeson's Will".

The young heroine, shipwrecked in distant seas, was cast upon a desert island. Before being rescued she allowed a will to be tattooed across her shoulders, for in the absence of paper or parchment such tattooing was the only device. Later, when she returned to civilization and the time came to probate the will, she learned that the law required the filing of the original document in court. However, the registrar was so touched by beauty in distress that he allowed a photograph of the will to be filed, and the girl went happily away. In his preface to the story the author said that at some time or other legacies had probably passed under wills such as he described.

At all events the story has an excellent moral. For a person wrecked on a lonely island, far from

civilized ways, to go to such extremes in order to make a will, gives eloquent expression to the idea that there are laws which permit a man to dispose of his estate as he chooses, and guarantee that his wishes will be carried out.

* * *

It is asserted that Noah made a will, but no mention of it is recorded in the Scriptures. However, the belief became established and the Bishop of Brescia in the fourth century, declared all persons heretical who denied the division of the world as made by Noah to his three sons, and one writer even pretended to give the very words in which the act was drawn up.

Some writers maintain that a will discovered by Petrie, while exploring the ruins of Kahun—not many leagues from the great pyramids, is the oldest of which there is now any positive knowledge. Perhaps the papyrus was inscribed forty-five centuries ago but "the document is so curiously modern in form that it might almost be granted probate today." Others maintain that an Egyptian Prince of the Fourth Dynasty, made a will not later than 2845 B. C., or nearly forty-eight hundred years ago, in the dim, mysterious past.

The court scene in Rider Haggard's novel "Mr. Meeson's Will".

Later, the use and influence of the will became more of a usual thing. Cleopatra's father, Ptolemy XIII, had no end of anxiety because of a will made by his predecessor, Ptolemy XII. The latter indulged in collossal extravagance, and in order to borrow large sums from Rome made a will appointing the Roman Republic his heir, thus voluntarily bringing his dynasty to a close with his own decease.

When he died, the Roman Senate acknowledged the authenticity of the will but the people of Alexandria had accepted Ptolemy XIII—Cleopatra's father—as their king and the Romans made no effort to dethrone him. They contented themselves with "seizing, by virtue of the document, as much of the private fortune of the testator as they could lay hands on". The new king, however, lived in constant fear that the Romans would try to take Egypt because of his predecessor's bequest.

* * *

Notwithstanding the discovery from time to time of other ancient testaments—Solon is said to have introduced wills at Athens, for childless persons, 578 B. C.; the Koran contains regulations respecting wills; Cortez found them in use among the Aztecs—

Cleopatra, who might never have been Queen of Egypt had the will of Ptolemy XII been enforced.

there is reason to believe that the instrument, as known today, was invented by the Romans.

In Rome the right to make a will was so highly prized that a citizen, says an old account, could wish his enemy no greater evil than that he be not allowed to make one. There were many restrictions, however. For example, no Roman could leave more than a fourth of his property to a female. According to Mommsen, this was because the mass of capital collected in the hands of women appeared to statesmen so dangerous that they prohibited by law the testamentary nomination of women as heirs, and sought to deprive them of some collateral inheritances likewise.

The Romans deposited their wills either privately in the hands of a friend, or publicly in a temple. The will of Julius Caesar was entrusted to the eldest of the Vestals, in the temple, soon to be restored, where virgin priestesses guarded the sacred and eternal fire of the city. It is said that Cleopatra, then queen of Egypt, was in Rome when Caesar was assassinated. She had borne him a son and possibly expected that his will would contain some provision for the boy. So far as is known, it did not.

After the fall of the Roman Empire, the idea of the testament passed through many vicissitudes. Du

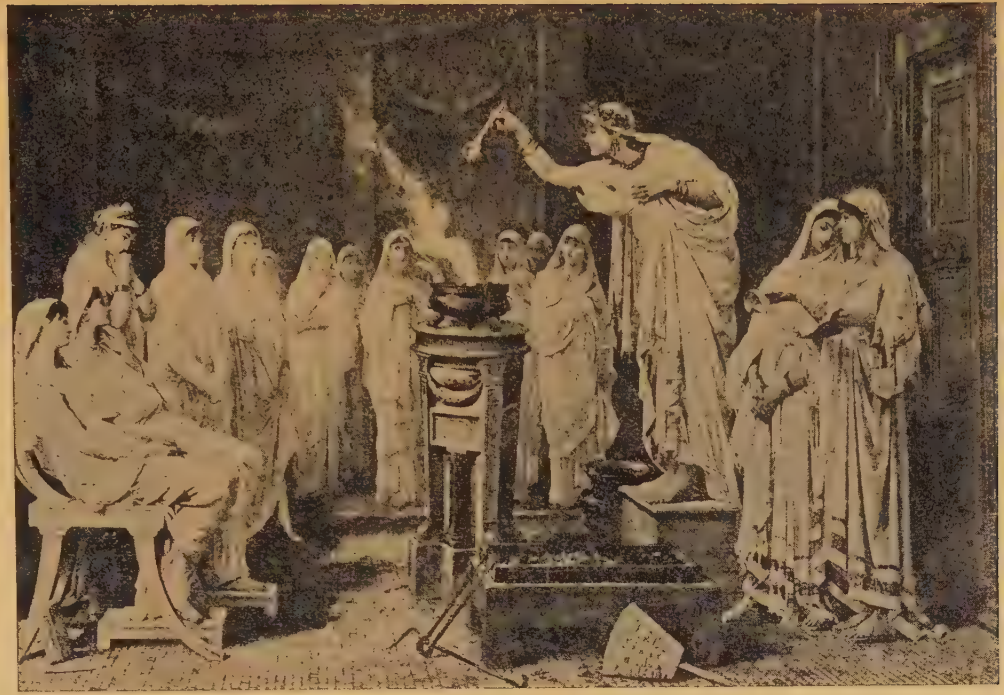
In the Court of Montezuma. Cortez found wills in use among the Aztecs.

Cange, the seventeenth century medievalist and compiler of that vast glossary of Latin words of the Middle Ages, tells of wills that were written on bark, or on wood, in the seventh century. Although it is recorded that wills were not recognized by the ancient Germans, yet in France, as elsewhere in Christendom, beginning in early times, the clergy were entrusted with the duty of looking after estates.

* * *

To select any particular date and say that then began the modern making of wills would be no more than to hazard a guess. Actually, the right to dispose of property according to individual wishes, as such right is exercised today, is a privilege that required centuries of effort to bring about.

For instance, in Britain wills had been introduced by the Romans and were used later among the Anglo-Saxons, but after the Norman Conquest they were forbidden in England for a while. Later the practice, with many limitations, was resumed. But not until the time of Henry VIII could real estate be disposed of by will, and then only in a limited way. Gradually the laws in England regarding the right to bequeath property were altered, but we find as recently as the period of



In the Temple of the Vestal Virgins: the will of Julius Caesar was entrusted to the eldest of the Vestals.

Queen Victoria, that verbal or spoken wills had recognition, though such a system is replete with opportunities for fraud and misunderstanding. As during the Middle Ages the church had been sole custodian and administrator of wills, so down to this time bishops continued to have charge of administering estates.

While a statute enacted during the reign of Charles II, required wills affecting *real estate* to be in writing, it was not made mandatory until 1838 that wills of personal estates be written. And it was not until January, 1858 that, under act of Parliament of the previous year, all ecclesiastical jurisdiction in matters testamentary was abolished and such jurisdiction vested in the crown to be exercised thenceforth "in and through the Court of Probate".

After the American revolution the states generally maintained the common law of England, except that ecclesiastical authority in matters relating to wills was not recognized. Instead, this authority was given to special courts, denominated Probate Courts in some states, Orphans' Courts in others—as in Maryland—and Surrogates' Court in New York. The word "surrogate" is reminiscent of old

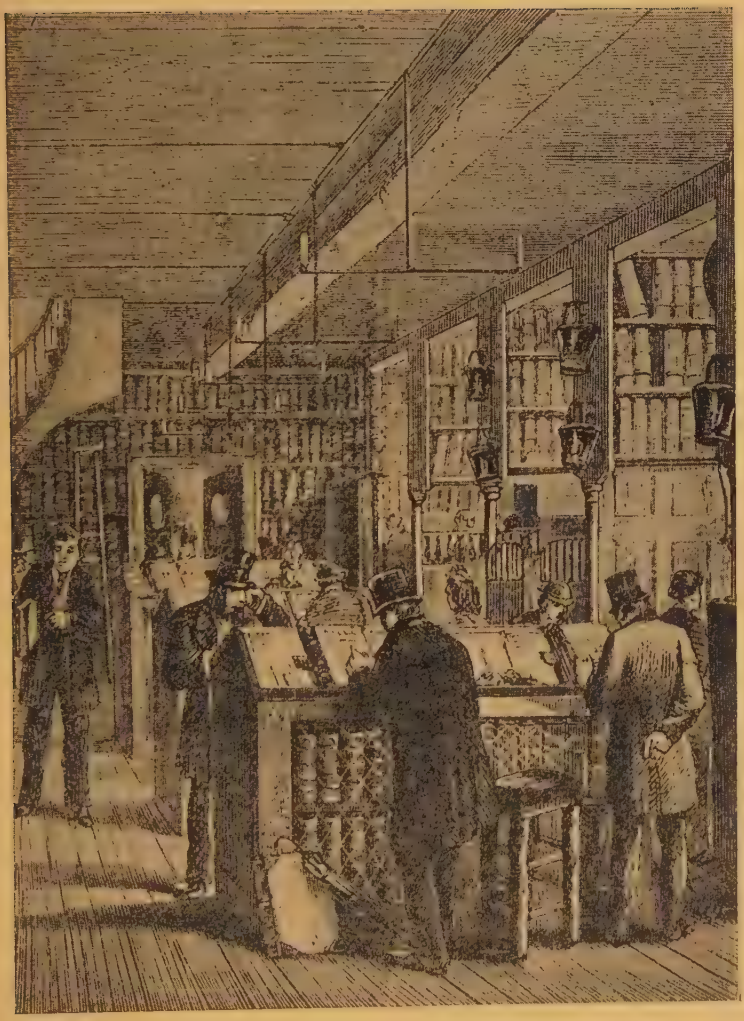
"Her Majesty, Queen Victoria", after a portrait by Sir W. C. Ross, R. A. Important changes in testamentary law were made in the earlier years of her reign.

church jurisdiction, since once upon a time it had denoted the deputy of a bishop.

* * *

The largest collection of wills in the world, is in *Somerset House*, London. Most of these documents were formerly held in the now obsolete institution, *Doctors Commons,* and represent the accumulation of five hundred years. *Doctors Commons,* which stood for centuries in the shadow of St. Paul's Cathedral, passed away in the last century. It was there that the bishops and their deputies conducted business in connection with estates.

The name *Doctors Commons* originated as follows: before the time of Henry VIII, the civilians and canonists, or doctors of the civil and canon law, did not form a distinct society, but about the beginning of the reign there was an agreement made between the civilians and canonists to dwell in contiguous houses and enjoy a *community* of board or common table. The new association was "the College of Doctors and Advocates of the Court of Arches". The place of the first home of the Society is in doubt; one writer places it in Paternoster Row. In 1568, however, its members obtained a lease of Mountjoy House, which was burned in the great fire



The Prerogative Office, Doctors Commons, the famous Will Office of an older London.

of 1666. The College was rebuilt and the new building occupied six years later.

"The Old Registry", says an account, "was a very interesting place . . . . . among the special curiosities of this storehouse of ancient documents are some wills which the nation, and indeed the world, would not willingly allow to perish. With a single exception these have been transferred to the Will Office in *Somerset House*. Here the visitor, if properly introduced, may see the will of the painter Van Dyck, of Doctor Johnson, of Lord Nelson, of the Duke of Wellington, of John Milton and above all, that of William Shakespeare . . . the will of the Great Napoleon was to be seen for many years at *Doctors Commons*, but it was restored to the French nation in compliance with the request of the Emperor Louis Napoleon."

Some of the documents found in this ancient collection give colorful pictures of old-time life. There is a will, for instance, of Thomas Walker, dated April 25, 1666, which ordered that a sum of money be set aside, the interest on which was to provide loaves of bread to be given people attending church services. His only stipulation was that the recipients "be no drunkards or common swearers".

Another gentleman, John Balliston, in a will made October 16, 1585, left a sum of money so that three times a year, the poor and needy of the parish should be summoned; "all should be above the age of eleven years and that every four of them should have set before them a two-penny wheat loaf, four pounds of beef and broth, and a gallon of the best beer".

* * *

In former days, as now, the way young women dressed was not universally approved. One finds the will of a rector who wrote of his daughter's "objectionable practice of going with her arms bare up to her elbow"; if she persisted, his property was to go to a nephew.

Wills in poetry or rhyme were not unknown, according to the *Doctors Commons* collection. An attorney, named Smithers, who resided in London, wrote:

As to all my worldly goods, now or to be in store,
I give them to my beloved wife and hers forevermore.
I give all freely, I no limit fix;
This is my will and she's executrix.

* * *

In other countries also one might find many odd and interesting wills. In 1879 the "Berliner Tage-

blatt" told of a man who left a large fortune to charity and also created a fund of ten thousand marks, "the interest of which is to be expended in serving weekly a quarter of a tun of Bavarian beer to the frequenters of a brewery in the Prinzenstrasse" where the testator had been in the habit of spending his evenings for a great many years. In France a sum of money was bequeathed to provide marriage portions for poor but deserving young girls.

* * *

The student of the history of wills is impressed by the number of references to the importance of having wills properly written. As long ago as the seventeenth century, a learned jurist, Sir Edward Coke, Lord Chief Justice of England, uttered this warning: "If it please you to devise your lands by will, make it by good advice . . . according to law and thereby avoid questions and controversies".

* * *

An old copy of the "North American Review" contains an editorial on the subject: "There never was a fitter application of Pope's line 'a little learning is a dangerous thing' than in the preparation of wills; and it is a most astounding fact that men

Sir Edward Coke, Lord Chief Justice of England in the reign of James I. Coke urged that wills be made "by good advice . . . according to law".

who have lived prudently, who have been conservative and successful in business, who have accumulated large wealth, who have been buffeted by every wave of misfortune, will attempt by their own hands or through incompetent agents, to write their wills . . . without aid of counsel."

* * *

Dickens, Thackeray and other novelists frequently wrote about wills. Readers of Dickens will recall how the litigation of Jarndyce *v.* Jarndyce arose from a disputed will. And they may remember how in "David Copperfield", Mr. Spenlow, a practitioner in *Doctors Commons,* talked long and eloquently about his will, then shattered David's hopes by failing to make one.

A missing will would seem to be the novelist's delight. Fact and fiction have furnished so many examples of misfortune connected with a testament lost or destroyed that next to making a will properly, it would seem that nothing is quite so important as to guard against the document being misplaced.

Before the day of safe deposit boxes, no hiding place for a will was unlikely. Lord Hailes' daugh-

Somerset House, which now contains the Will Office in London, wherein are held testamentary documents representing the accumulation of five hundred years. Included in the collection are wills of the great and near-great.

ter, fearing she would be obliged to give up the family mansion because her father's will had not been found, prepared to vacate. When closing the house there fell from behind a panel the will which secured her estate. A curious story told in the Probate Court in London involved a will that was found in a clock; another account concerns an estate of £11,000, the will concerning it being eventually discovered in a silk hat.

* * *

In Maryland, the earliest will was made by a William Smith, September 22, 1635, shortly after the arrival of the first colonist there. The records refer to him as "a cultivator of the soil".

It is interesting to note that the first legal text book printed in Maryland was devoted entirely to the subject of wills. It is the "Deputy Commissary's Guide within the Province of Maryland", written by Elie Vallette, Registrar of the Prerogative office at Annapolis and printed by Ann Catherine Green & Son of that city in 1774.

The following quotation from the book is a sidelight on Maryland life and on former conditions

elsewhere: "A wife generally cannot dispose by will of chattels without consent of her husband".

* * *

Among the most important wills on record in Baltimore are those of Johns Hopkins, Enoch Pratt and George Peabody. One founded the hospital and university which bear his name; one made possible a system of free libraries and a hospital; one established the *Peabody Institute.*

In 1865 another Baltimorean, John P. Kennedy, famous as a novelist, lawyer, member of Congress and Secretary of the Navy, made a codicil to his will, in which he left $1,000 in trust to the *Aged Men's Home of Baltimore* and a like amount in trust for the *Aged Women's Home.* He was seventy at the time. He specified, regarding the bequest for the *Aged Men's Home,* that "out of the interest thereof there shall be supplied a bowl of punch every year on Christmas Day for the refreshment and comfort of the pensioners or the inmates of the house at their Christmas dinner". With respect to the *Aged Women's Home:* "the yearly interest to be applied to supplying a proper quantity of wine for the Christmas dinner each year". And Mr. Kennedy wrote: "I hope that the people of both sexes will

kindly remember me in the enjoyment of the solace which this donation may annually afford them".

Two other wills in which Baltimoreans have an interest are those of John McDonogh and James Lick. The former was a Baltimorean by birth, but for years a prominent resident of New Orleans. He died in 1850, leaving half of his estate to the city of his adoption for educational purposes; the other half to the city of his birth, to found a farm school for the education of boys. *McDonogh School,* in Baltimore County, is a monument to his kindness of heart.

James Lick was born in Pennsylvania in 1796. He spent part of his early life in Baltimore and died in California in 1876. He left an estate of $4,000,000, the greater part of which went to public benefactions. He gave $700,000 for the astronomical observatory which bears his name at the University of California. And he gave $60,000 for the erection of a bronze monument in Golden Gate Park, San Francisco, "to the memory of Francis Scott Key, author of 'The Star Spangled Banner' ".

* * *

Increasing wealth, an increasing number of people who have acquired estates, the more intricate sys-

Enoch Pratt, one of the incorporators of the Mercantile Trust & Deposit Co. His will is one of the most important on record in Baltimore.

tem of business that has developed in the past thirty or forty years and the multiplicity of tax laws, have contributed toward making trust company management of estates an important factor in present-day life.

The trust company says, in effect:

> *"By all means make a will. Change it, if necessary, from time to time, but do not procrastinate. Go to a good lawyer and make your testament proof against misinterpretation. Name a trust company as your executor, because such a company has experience which the average individual cannot possess.*
>
> *"Put your property in trust. Your heirs will then have no temptation to be extravagant, nor will 'friends' be able to influence investments, nor will unscrupulous 'stock promoters' get a share."*

* * *

If "Studies in Wills" helps to instill the thought that present day law confers a great privilege in giving the right to dispose of property as desired,

and if it makes clear the necessity of legal advice, it will have accomplished a useful purpose.

The *Mercantile Trust & Deposit Company* was built on a foundation of conservatism, honesty and courtesy, and as time went on the Company won such a place in the confidence of the community as these methods obtain.

Reference to the *Mercantile* is deemed proper because the Company has had forty-two years of experience in administering estates and managing trusts. It offers to all who place the future handling of their affairs in its keeping the assurance that in conducting such business the company will adhere to the policies of its founders—honest and conservative management, fair and courteous dealing.

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